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VIA HAND DELIVERY

The Honorable Walter Thomas
Alabama Public Service Commission
RSA Union Building
100 North Union Street
Montgomery, AL 36104

Re: Proposed Revisions to Price Regulation and Local Competition Plan, Docket: 28590

Dear Mr. Thomas:

Enclosed herein for filing with the Alabama Public Service Commission are the original and ten copies of the Reply Comments of the Non-BellSouth ILECS filed on behalf of the Incumbent Telephone Companies listed in Appendix "A" to the Petition.

If you have any questions, please do not hesitate to contact me.

Very Truly Yours,

BRANTLEY, WILKERSON & BRYAN, P.C.

Mark D. Wilkerson

MDW:cld

Enclosure

BEFORE THE
ALABAMA PUBLIC SERVICE COMMISSION
MONTGOMERY, ALABAMA

IN RE:

PROPOSED REVISIONS TO THE PRICE REGULATION AND LOCAL COMPETITION PLAN	)))	**DOCKET NO. 28590**

Reply Comments of the Non-BellSouth ILECs

In accordance with this Commission's Order dated September 22, 2003, the Incumbent Local Telephone Companies ("the ILECs" or "the Independents") listed in Exhibit "A" attached hereto, provide the following reply comments. As part of their reply comments, the ILECs also submit, as Exhibit "B", a proposed revised Pricing Flexibility Plan for Incumbent Local Exchange Carriers Operating in Alabama (the "Revised Plan"), incorporating initial comments made by the ILECs and others.[1]

Summary of Comments

The ILECs reassert that rapidly changing circumstances justify greater pricing flexibility than originally proposed as part of the Rural LEC Plan or APSC Staff Proposal. A single, statewide plan is needed to avoid the anomaly of the largest ILEC in the state, BellSouth, having much greater pricing flexibility than much smaller ILECs serving the same general service area. BellSouth's Metro Pricing Flexibility Plan should be modified and broadened, as outlined in the Revised Plan, to provide a comprehensive regulatory scheme that encompasses all providers of telecommunications services coming under the Commission's jurisdiction. The ILECs concur with the use of statistical areas as an initial means of delineating tiered pricing flexibility as part of such statewide plan.

[1] In their Initial Comments, the ILECs cited specific areas where the Staff Plan fails to adequately address the current telecommunications environment.

In their comments, AT&T, ITC^DeltaCom and the Attorney General understate the competitive alternatives available in both urban and rural areas. In the wake of increased intermodel competition and the provisioning of new services, any regulatory plan approved by the Commission needs to recognize new technologies, such as intrastate phone-to-phone or other Voice over Internet Protocol (VoIP) services, and jettison increasingly obsolete Basic, Access and Non-Basic Services categories for broader-based categories, such as the Retail and Interconnection Services categories initially proposed by BellSouth.

The Revised Plan differs slightly from the BellSouth Metro Pricing Plan in its definition of local access and interexchange services. The changes are needed to ensure that competitors cannot avoid the payment of access charges simply through self-serving labels or the simple failure to acknowledge the authority of state regulators. For example, claims by some internet telephony (IP) providers of a "nationwide calling area" should not allow such companies to avoid the payment of access charges for the use of the local switched telephone network. Traffic between discrete BellSouth and ILEC service areas should also continue to be classified as interexchange services.[2]

AT&T's comparison of the average Independent access charge rate and BellSouth's UNE rates is inappropriate and misleading.[3] Due to forward-looking action taken by this Commission in the 1990s, the access charge rates of the Alabama ILECs are substantially below most other Southern states. Access charges remain an important

[2] As noted by the ILECs on page 7 of their Initial Comments, this Commission has previously stated its intent not to allow BellSouth to unilaterally reduce ILEC to ILEC intercarrier payments. On August 23, 2002, the APSC issued an Order requiring BellSouth and the Independents to "transact business ... with regard to the exchange of traffic between their respective territories and the disbursement of compensation therefore in the same manner in which they were handling such matters prior to April 30, 2002." Order Granting Motion for Standstill, *In re: Intercarrier Compensation*, Docket No 28642, at p 16 (APSC Aug. 3, 2002).

[3] AT&T's Comments, p. 7.

component of cost recovery and must be maintained in order for the ILECs to meet their carrier of last resort obligations. Reductions in interstate switched access rate elements have historically been accompanied by offsetting increases in the federal subscriber line charge (SLC) and/or increases in universal service funding.[4] The ILECs thus agree with BellSouth that it is critical that the ILECs receive an offsetting revenue recovery prior to any reduction in intrastate access fees to match any future interstate reductions. Any plan must also allow for adjustments in the event of extraordinary governmental mandates.

The ILECs concur with the Attorney General that changes to Commission complaint procedures and other rules should be examined in light of the advent of bundled services and other changes. The ILECs recognize the important role of the APSC in resolving complaints and service disputes in the increasingly complex telecommunications marketplace. This role should be strengthened. The ILECs suggest that the Commission hold workshops to examine any needed changes.

The Revised Rural LEC Plan would provide the stability necessary to allow the rural ILECs to implement the Rural Calling Plans, which were originally proposed as part of the old Rural LEC Plan. This would provide a needed benefit for rural consumers.

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[4] For price cap carriers, the reduction in interstate access rate levels was established in the CALLS proceeding, which increased the interstate SLC caps and established a $650 million universal service fund element. *See, Sixth Report and Order*, CC Docket Nos. 96-262 and 94-1, *Report and Order*, CC Docket No. 99-249, *Eleventh Report and Order*, CC Docket No. 96-45, (FCC May 31, 2000). For rate of return carriers, the latest decrease in interstate access charges included an increase in the SLC caps and establishment of the Interstate Common Line Support (ICLS) universal service support fund element. *See, Second Report and Order and Further Notice of Proposed Rulemaking*, CC Docket No. 00-256, *Fifteenth Report and Order*, CC Docket No. 96-45, *and Report and Order*, CC Docket Nos. 98-77 and 98-166, (FCC Oct. 11, 2001).

I. Increased Pricing Flexibility is Critical to Ensuring Competition Among Telecommunications Carriers in Today's Market.

The advent of new technologies in telecommunications, either alone or in combination with traditional wireline services, means that any regulatory plan adopted by this Commission must be forward-looking and flexible enough to change with changing times. As demonstrated by recent events, new developments in telecommunications do not necessarily fit into traditional service classifications, nor do they wear any particular label well for long. The ILECs agree with AT&T that the proposed regulatory plans should be broadened[5] and advocate a price regulation plan which encompasses all of the telecommunications services regulated by the Commission and offered by telecommunications providers. Contrary to the Attorney General's assertions, there is no need to wait to develop a plan that applies to both urban and rural areas. A global plan can accommodate differences in levels of competition, as well as the economic and technical limitations of smaller ILECs.

This Commission should fairly and equitably exercise jurisdiction over all intrastate telecommunications services that utilize the telecommunications network in whole or in part, such as intrastate phone-to-phone internet telephony (IP) or Voice over Internet Protocol (VoIP) services, and the Commission should retain such jurisdiction until federal guidelines are either expanded to address these new services or the determination of the nature and extent of regulatory authority over them is deferred to the states. Should this Commission determine that certain services are unregulated when provided by one class of carrier, the same or like services should be unregulated when

[5] AT&T's Comments, p. 3.

provided by all other carriers, including ILECs. The Commission must not hamstring the ILECs with a level of retail price regulation not shared by their direct competitors.

The analysis of the Attorney General's consultant, Dr. Marvin Kahn, understates the impact of CMRS competition by focusing solely on his low estimate of wireline replacement.[6] While conceding that over sixty percent (60%) of households nationwide had one or more wireless phones in 2002, he estimates that only three percent of households use such phones to displace their wireline phone.[7] Dr. Kahn's analysis ignores the use of wireless phones for a variety of services once provided by ILECs, and the resulting loss of revenue. It also fails to take into account the rapid growth of wireless carriers into rural areas of the state over the last two years, most recently with the benefit of federal high-cost support.[8]

Dr. Kahn similarly gives short thrift to the cascade of IP providers, who to date have operated beyond the reach of state regulators, often without having to pay for use of the local telephone network. A review of the advertisements of other IP providers offering service in Alabama suggests the nature of the threat. *See VoicePulse Broadband Phone Service,* at http://www.voicepulse.com (accessed Dec. 1, 2003). Analysts estimate that fully ten percent (10%) of telephone calls now use the internet, and that in ten years, the percentage could be close to one hundred percent (100%). Evan Hansen, *VoIP Firms Battle California Regulators*, CNET News, at http://news.com.com/2100-7352-5096966.html. As stated in the ILECs' initial comments, multiple IP providers are

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[6] Attorney General's Comments, Exhibit A, p. 9

[7] Id.

[8] Such support has been awarded by the FCC based on findings that such carriers will "offer and advertise the services supported by the federal universal support mechanisms throughout the designated service area." See *RCC Holdings, Inc*, DA 02-3181(WCB rel. Nov. 27, 2002); *Cellular South License, Inc*, DA 02-3317 (WCB rel Dec 4, 2002) (Application for Review Pending).

now offering local telephone service to any customer with broadband access (which is now available by satellite, DSL, or cable modem to every Alabama consumer), a technology that is rapidly rendering obsolete traditional concerns about ILEC "bottleneck" facilities.

On page 7 of his comments, the Attorney General states, "Maybe the company with the lowest price should get the customer without any assistance from regulators." Increasingly, the ILEC's competitors are receiving extraordinary assistance from the current regulatory scheme in the form of favored regulatory treatment (or no regulation at all), absence of carrier of last resort obligations, and in many cases, avoidance of network charges. This disparity is particularly harmful to smaller ILECs serving in high cost areas with limited resources.

It is imperative that the Commission shorten the time frames between filing tariffs for new services or changes to existing services and their effective dates for implementation. Although the Rural LECs' Plan provides for the submission of supporting documentation for Commission review of compliance with relevant pricing rules and regulations governing consumer protection and disclosure, the Commission's scrutiny should be lessened under a market-driven, flexible pricing plan that utilizes broadly-based, fundamental categories of service. The ILECs support the Commission's right to investigate any tariff on its own motion or by a third party's petition, but the suspension of tariffs deemed presumptively valid pending the outcome of such investigations negates the very flexibility the Plan was designed to ensure. By requiring companies to bear the expense of defending any challenged tariffs in a formal hearing and face subsequent, and perhaps, substantial modifications of their tariffs, the Rural

LECs' Plan provides an incentive for companies to voluntarily meet the Commission's requirements without adding another regulatory layer to the final plan.

The Plan should initially include Dothan as a Tier I MSA area and the Auburn-Opelika area as a Tier II MSA. The Independents agree with the mechanism proposed by BellSouth for reclassifying statistical areas and wire centers, with certain key adjustments. The Rural LECs' Plan adopts the use of tiered MSAs and non-MSA areas, as well as the new "micropolitan statistical areas" to reflect geographically defined areas of greater or lesser competition among the State's telecommunications carriers. By providing a mechanism for reclassifying statistical areas and wire centers that requires a petition, supporting documentation, and Commission approval and permits intervention, the public interest is protected and potential growth in rural or less urban areas may be encompassed by the Plan.

Should an ILEC wire center be reclassified, such reclassification should also apply to all adjacent or overlapping wire centers of other ILECs to avoid any disparity in the regulatory treatment of carriers offering identical services in the same service area.[9]

The ILECs propose shortening the time frames between filing and effective dates for tariffs changing terms and conditions to existing services to fourteen (14) days; seven (7) days for new services; seven (7) days for price increases in Tier I MSAs, and fourteen (14) days for increases in Tier II MSAs, where competition is less intense. Tariffs that grandfather, obsolete or eliminate current services require additional customer notification and should be effective no sooner than sixty (60) days after the filing date. In

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[9] On September 13, 2000, this Commission granted BellSouth authority to extend "CLEC services in Alabama outside of BellSouth's franchise area under the same tariffs that BellSouth provides services inside its exchange area." *Application of BellSouth Telecommunications, Inc.* Docket No. 27663 (Sept. 30, 2000).

the interest of consumer protection, the ILECs have also incorporated additional requirements for customer notification of price increases by bill message, insert or direct mail at least seven (7) days before the effective date of any such increase.

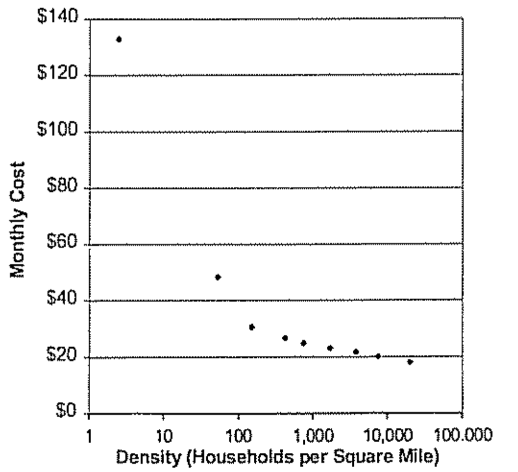
The Revised Plan makes cost supporting documentation for Promotions, Customer Value Programs, Bundled Services, and Marketing and Technical Trials available to the Commission's Staff upon request, and although formal tariffs need not be filed, the Plan requires that specific supporting documentation describing the affected service, its eligibility to customers, and availability for resale accompany its submission. Any regulatory plan adopted by the Commission should not hinder swift implementation of innovative and beneficial service offerings. Promotional time frames are limited only by market conditions and the offering ILEC's individual business plan.

II. Cost Justification.

The ILECs concur with BellSouth that Long Run Incremental Cost (LRIC), rather than an ILEC's Total Service Long Run Incremental Cost (TSLRIC) or the equivalent UNE composite rate, should be retained as the appropriate price floor for retail services. Because the current regulation plan utilizes LRIC as the cost-based level mechanism for pricing, and LRIC is available for all BellSouth services in the absence of an applicable TSLRIC rate, it is appropriate to retain LRIC as a price floor under any plan adopted by the Commission. However, in most instances, it is not feasible for small ILECs to prepare costly LRIC studies, nor are such studies justified. For that reason, service prices for non-BellSouth ILECs should be considered presumptively compliant with this requirement if they are at or above prices for comparable BellSouth services.

Access charges remain a critical component of ILEC revenues. AT&T's comparison of BellSouth's UNE rates with the average switched access rate of the ILECs ignores the fundamental difference between BellSouth's "forward looking" costs in dense urban areas and the cost of providing access to the local telephone network in largely rural areas of the State.[10] As this Commission is aware, the cost of building and maintaining a network is extremely sensitive to the density of the serving area. The following publicly available data taken from the FCC's proxy model proceeding illustrates the relationship of density and cost[11]:

Households per Square Mile	Nationwide Average Cost
0 to 5	$133.00
5 to 100	$48.44
100 to 200	$30.72
200 to 650	$26.87
650 to 850	$25.05
850 to 2550	$23.11
2550 to 5000	$21.83
5000 to 10,000	$20.25
> 10,000	$18.16



Source: BCPM3 0 with FCC Common Inputs

This chart shows the nationwide average monthly cost of providing basic telephone service in each of the nine (9) density zones identified by the FCC. What is clear from this data is that costs gradually increase with decreasing population density until reaching a density of approximately 100 households per square mile. Below this level, costs increase geometrically as subscriber density decreases.

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[10] AT&T, p. 7.

[11] The data is taken from the BCPM 3.0 with FCC Common Inputs. The BCPM is the only model with publicly available data for all rural and non-rural study areas in the nation.

Understandably, AT&T and others would like to shift the recovery for as much of this cost as possible from interexchange carriers to the local consumer. However, at this point, such action is unnecessary and simply not in the public interest.[12]

The Plan must provide for an offsetting recovery from a state USF, capacity charge, SLC or other end user charge for any reduction in intrastate access fees that may result from capping switched access service charges at interstate levels. Also, it is axiomatic that any plan should allow for recovery in the event of governmental mandates not in place at the time of adoption. Contrary to the assertions of one commentator, a price cap regulatory environment should not require an ILEC to bear the risk of governmental action that fundamentally changes the basis for the regulatory scheme.[13]

Respectfully submitted on this 27th day of January, 2004.

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[12] See ILECs' Initial Comments, p. 7, citing a just released study conducted by the National Exchange Carriers Association (NECA), Trends in Telecommunications Cost Recovery: The Impact on Rural America (Jan. 6, 2004), *available at* www.neca.org.
[13] Attorney General, p. 8.

CERTIFICATE OF SERVICE

I hereby certify that I have, this 27th day of January, 2004, served a copy of the foregoing document on all counsel of record by placing a copy of same in the United States Mail, postage prepaid and properly addressed as follows:

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OF COUNSEL

EXHIBIT "A"

ALLTEL Alabama, Inc.
Ardmore Telephone Company, Inc.
Blountsville Telephone Company
Butler Telephone Company, Inc.
Brindlee Mountain Telephone Company
Castleberry Telephone Company, Inc.
CenturyTel of Alabama, LLC
Farmers Telephone Cooperative, Inc.
GTC, Inc. d/b/a GT Com
Frontier Communications of Alabama
Frontier Communications of Lamar County
Frontier Communications of the South, Inc.
Graceba Total Communications, Inc.
Gulf Telephone Company
Hayneville Telephone Company, Inc.
Hopper Telecommunications Co., Inc.
Interstate Telephone Company
Millry Telephone Company, Inc.
Mon-Cre Telephone Cooperative, Inc.
Moundville Telephone Company, Inc.
National Telephone of Alabama, Inc.
New Hope Telephone Cooperative, Inc.
Oakman Telephone Company, Inc.
Otelco Telephone, LLC. (formerly
Oneonta Telephone Company, Inc.).
Peoples Telephone Company, Inc.
Pine Belt Telephone Company, Inc.
Ragland Telephone Company, Inc.
Roanoke Telephone Company, Inc.
Union Springs Telephone Company
Valley Telephone Company

EXHIBIT "B"

PRICING FLEXIBILITY PLAN
FOR
INCUMBENT LOCAL EXCHANGE CARRIERS OPERATING IN ALABAMA

1. APPLICABILITY OF THE PLAN

The Pricing Flexibility Plan ("the Plan") will apply to all telecommunications services offered by an incumbent local exchange carrier ("ILEC") and regulated by the Alabama Public Service Commission (hereinafter referred to as "the Commission"), as specified herein. The Plan and its terms and conditions shall not be construed to confer any regulatory authority to the Commission not existing on the effective date of the Plan for unregulated products or services offered by an ILEC or any of its affiliates.

2. DEFINITIONS

A. "Bundled Services" are packages of services offered by an ILEC at one price for the Bundled Service offering in combination with one or more of the following:

   i) An ILEC unregulated service; and/or,

   ii) An ILEC affiliate's regulated and/or unregulated service.

B. "Contract Service Arrangement" ("CSA") is an arrangement wherein an ILEC provides services pursuant to a contract between the ILEC and customers in Tier I MSAs where competitive alternatives are known to exist and in Tier II MSAs and Non-MSAs in response to a competitive alternative or other unique circumstances. Such arrangements include situations in which the services are not otherwise available through an ILEC's tariffs, as well as situations in which the services are available through an ILEC's tariffs, but an ILEC offers those services at prices other than those specified in its tariffs. CSA's are also referred to as Individual Case Basis (ICB) arrangements.

C. "Customer Value Program" is the offering of volume and/or term discounts by an ILEC to eligible customers in the ILEC's service area. Customers subscribing to such programs will receive ongoing benefits for a duration that may exceed ninety (90) calendar days.

D. "Effective Date" is the proposed date on which a new tariff or tariff revision is considered effective. The Effective Date is based on a specified number of calendar days following, but excluding, the File Date.

E. "Eligibility Criteria" are the factors used to determine the customers and/or potential customers who would qualify for a Promotion, Customer Value Program, Marketing/Technical Trial, or Bundled Service: *i.e.*, current services or services a customer must subscribe to, monthly spending requirements, service or usage volume, term commitment, geographic location, such as wire center, and/or any other identifiable characteristic.

F. "File Date" is the official date recorded by the office of the Director of the Commission's Administrative Division (Commission Secretary) for any proposed tariff or tariff revision submitted by a telecommunications provider and accepted by the Commission. The File Date is considered administrative in nature.

G. "Interconnection Services" include Switched Access Services, Special Access Services, and Local Access Services and are defined as follows:

i) "Switched Access Services" allow providers of interexchange services to interconnect to an ILEC's network in order to originate or terminate switched interexchange calls.

ii) "Special Access Services" are services providing an analog or digital transmission path that is not switched by an ILEC end office to directly connect a provider of interexchange service's terminal location and an end user's premises, two IXC terminal locations, an IXC terminal location and a hub, or two end user premises.

iii) "Local Access Services" allow competitive local exchange carriers ("CLECs") or other providers of local exchange services to complete local calls via an ILEC's network pursuant to the Telecommunications Act of 1996 ("the Act") through the interconnection of a CLEC's or other provider's network to an ILEC's network, through the resale by a CLEC of an ILEC's regulated retail services, or, where applicable, through the purchase by the CLEC of unbundled network elements ("UNEs") offered by an ILEC.

H. "Interexchange Services" are services that allow for a customer to complete calls outside of the customer's base rate area, or in the event that the serving carrier has no defined base rate exchange boundary within the state, the base rate exchange boundary of the ILEC.

I. "Long Run Incremental Cost" ("LRIC") is the cost an ILEC would incur (save) if it were to increase (decrease) the level of production of an existing or new service or group of services. LRIC consists of costs associated with adjusting future production capacity that are causally related to the services being studied. LRIC reflects forward-looking technology and operational methods.

J. "Marketing/Technical Trial" is the offering of a telecommunications service, combination of telecommunications services, or a telecommunications service or combination of telecommunications services in conjunction with a non-regulated service and/or non-telecommunications service by an ILEC to eligible customers on a trial basis in an ILEC's service area for technical and/or marketing purposes. Such trials shall be for the purpose of evaluating, in an operating environment, the performance and pricing of the specific service or services in conjunction with other marketing and environmental factors that can influence customer demand.

K. "Metropolitan Statistical Area" ("MSA") is an area, as defined by the Office of Management and Budget, with a large population nucleus that, together with adjacent communities, has a high degree of social and economic integration.

L. "Micropolitan Statistical Area" ("MICSA") is an area, as defined by the Office of Management and Budget, with a population nucleus that, together with adjacent communities, has a high degree of social and economic integration and has at least one urban cluster of at least 10,000 but less than 50,000 population.

M. "New Service" is a regulated function, feature, capability, or any combination thereof which is not offered by an ILEC as of the effective date of this Plan.

N. "Presumptively (or Presumed) Valid" means that the Commission presumes that a tariff, tariff revision, and/or Price List fully complies with the provisions and terms of the Plan as specified herein and is valid and effective on the proposed Effective Date.[1]

O. "Promotion" is the offering of a telecommunications service, combination of telecommunications services, or a telecommunications service or combination of telecommunications services in conjunction with a non-regulated service and/or non-telecommunications service by an ILEC to eligible customers in an ILEC's service area. Customers subscribing to promotional offerings receive a one-time or short-term benefit that shall not exceed ninety (90) calendar days.

P. "Retail Telecommunications Services" are the telecommunications services, other than Interconnection Services, which are offered by an ILEC and regulated by the Commission. Retail Telecommunications Services shall not include services determined to be unregulated and exempt from the Commission's jurisdiction, when offered by telecommunications providers other than ILECs and their affiliates.

Q. "Telecommunications Service" is the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available to the public, regardless of the facilities used.

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[1] "Presumptively Valid" does not preclude an intervener or the Commission Staff from challenging a tariff. The tariff would, however, become effective on the date proposed by an ILEC and remain effective pending the conclusion of the investigation. If after investigation, the tariff is found to violate the rules and regulations as set forth in this Plan, the Commission can deny the tariff, discontinue the service, and/or order refunds where appropriate.

3. GEOGRAPHIC AREAS

For purposes of the Plan, each ILEC's service territory shall be divided into Metropolitan Statistical Areas ("MSAs"), Non-MSA Areas and, as provided in Section 4, Micropolitan Statistical Areas ("MICSAs"). Additionally, on the effective date of the Plan, the following MSAs shall be designated as Tier I MSAs: Birmingham-Hoover, Mobile, Montgomery, Huntsville, and Dothan. The remaining MSAs, Anniston, Columbus (Georgia), Decatur, Florence, Gadsden, Pensacola (Florida), Auburn-Opelika, and Tuscaloosa, shall be designated as Tier II MSAs. The Non-MSA areas of the State shall be grouped together for regulatory purposes.

4. RECLASSIFICATION OF MSAs AND/OR WIRE CENTERS

An ILEC may file a request to reclassify a Tier II MSA to a Tier I MSA at any time after the effective date of this Plan. In addition, an ILEC may file a request to reclassify a specific wire center in a Tier II MSA or a Non-MSA area to the Tier I MSA category, or alternatively seek inclusion of a MICSA as a Tier I MSA.

For either reclassification effort, an ILEC shall file supporting documentation demonstrating that the Tier II MSA, a MICA, or wire center in a Tier II MSA or Non-MSA area is sufficiently competitive to qualify for the pricing flexibility afforded to Tier I MSAs. Factors upon which an ILEC may base its reclassification request may include, but are not limited to, collocation arrangements, residential and/or business competitive market share, alternative sources of switching, alternative sources of transport, intra-modal and/or inter-modal competitors, etc. The Commission will have ninety (90) calendar days from the date of filing of the reclassification request in which to approve, modify, or deny the request. Any such reclassification shall automatically incorporate any wire center of any another ILEC that overlaps or is adjacent to the same service area.

A third party, by timely petition to the Commission within the 90-day period, may request that the reclassification proposed by an ILEC be modified or denied. The 90-day period, however, shall not be extended as a result of third-party petitions.

Should the Commission fail to approve, modify, or deny an ILEC's request no later than ninety (90) calendar days from the filing of the request, an ILEC's reclassification shall be deemed approved as filed.

5. SERVICE CATEGORIES

Each telecommunications service offered by an ILEC and regulated by the Commission shall be assigned to one of two (2) categories: (1) Retail; and (2) Interconnection Services. Prior to the effective date of the Plan, each ILEC will file a schedule with the Commission showing the classification of services by category as of such effective date.

For multi-location customers with locations in Tier I MSAs and locations in Tier II MSAs and/or Non-MSA areas, all of the customers' locations will be treated as Tier I locations.

6. TARIFFS

Each ILEC shall file tariffs for all telecommunications services offered by such ILEC and regulated by the Commission, except as specifically exempted herein. Tariffs shall be filed for any proposed change to terms and/or conditions. The Commission shall deem all tariffs Presumptively Valid.

The Commission retains the authority to investigate Presumptively Valid tariffs on its own motion or by petition of another party, but may not suspend a Presumptively Valid tariff pending the outcome of an investigation. Modification to a Presumptively Valid tariff may be made following a hearing and on a prospective basis only.

A. Tariffs proposing changes to terms or conditions for telecommunications services offered by an ILEC and regulated by the Commission shall be Presumptively Valid and filed with a proposed Effective Date at least fourteen (14) calendar days following the File Date.

B. Tariffs proposing price reductions for telecommunications services offered by an ILEC and regulated by the Commission shall be Presumptively Valid and filed with a proposed Effective Date at least one (1) calendar day following the File Date.

C. Tariffs proposing price increases for Retail Telecommunications Services, Switched Access Services, or Special Access Services in Tier I MSAs shall be Presumptively Valid and filed with a proposed Effective Date at least seven (7) calendar days following the File Date. Price increases for Retail Telecommunications Services, Switched Access Services, or Special Access Services in Tier II MSAs and Non-MSA areas shall be Presumptively Valid and filed with a proposed Effective Date at least fourteen (14) calendar days following the File Date.

D. Tariffs for New Services shall be Presumptively Valid and filed with a proposed Effective Date at least seven (7) calendar days following the File Date.

E. Tariffs that grandfather/obsolete and/or eliminate telecommunications services shall be Presumptively Valid and filed with a proposed Effective Date at least sixty (60) calendar days following the File Date.

F. Price Lists shall be Presumptively Valid and filed with an Effective Date at least seven (7) calendar days following the File Date.

G. Tariffs that grandfather/obsolete and/or eliminate telecommunications services shall not be subject to the pricing limitations specified in Section 8 below.

7. PRICING RULES

A. Pricing Rules — General

The price for any new or existing service shall equal or exceed its LRIC unless: (1) specifically exempted by the Commission based on public interest concerns; or (2) an ILEC in good faith, and upon Commission approval, prices the service in order to meet the equally low price of a competitor. Service prices for non-BellSouth ILECs shall be considered presumptively compliant with the requirements of Section 8.A. if they are at or above prices for comparable services for BellSouth.

In the event that an ILEC prices a service below LRIC to meet the equally low price of a competitor, any intrastate universal service fund which may exist cannot be utilized to offset the resulting revenue shortfall.

No price reductions that will result in prices below LRIC in contravention to this Section will be allowed unless approved by the Commission. With respect to existing services that are priced below LRIC on the effective date of this Plan, such as existing traditional flat-rate local exchange services for residential customers, no price reductions will be allowed unless approved by the Commission.

B. Pricing Rules — Tier I MSAs

Effective January 1, 2004, prices for Retail Telecommunications Services and Special Access Services may be adjusted at the discretion of the ILEC subject to a Price List.

C. Pricing Rules — Tier II MSAs and Non-MSA Areas

Effective January 1, 2004, price increases for Retail Telecommunications Services and Special Access Services in Tier II MSAs and Non-MSA areas shall be adjusted at the discretion of the ILEC. Aggregate increases in these areas shall be limited to 5% annually.

D. Pricing Rules — Switched Access Services and Local Access Services

i) An ILEC may establish prices for all Switched Access Services. The combination of the traffic sensitive per minute charges for originating and terminating switched access service will be capped at the effective interstate level (including any non-traffic sensitive rate elements) approved for an ILEC by the Federal Communications Commission as of July 30, 2001. No intrastate access reduction will occur unless the subsidy to non-bundled, existing traditional flat-rate local exchange services for residential service provided by switched access is replaced by an end user charge or an intrastate universal service fund. The Transition Service Fund (TSF) will remain in effect.

ii) Regarding Local Access Services, where applicable under the Act, the resale discount applicable to an ILEC's prices for standalone retail telecommunications services and terms, conditions, and prices for unbundled network elements will be formally reviewed and appropriately adjusted periodically following a hearing by the Commission.[2]

8. PRICE LISTS

As set forth above, an ILEC may price telecommunications services provided to customers in Tier I MSAs by means of a Price List. Each Price List shall:

i) Be filed with the Commission;

ii) Describe the telecommunications service;

iii) Set forth the basic terms and conditions upon which the telecommunications service is offered; and,

iv) List the prices to be charged for the telecommunications service or the basis on which the services will be priced.

Prices offered pursuant to a Price List that are different from tariff prices for the same services are not considered discriminatory.

9. CONTRACT SERVICE ARRANGEMENTS

Customer-specific contract service arrangements ("CSAs") may be offered by an ILEC to customers in Tier I MSAs for any product or service provided by an ILEC and regulated by the Commission. CSAs may be offered by an ILEC to customers in Tier II MSAs and Non-MSA areas for any product or service provided by an ILEC and regulated by the Commission in response to a competitive alternative or in a unique customer situation. Rates, terms, and conditions, and additional regulations, if applicable, for the CSA will be developed on an individual case basis and will include all relevant costs, plus an appropriate level of contribution. Unless otherwise specified, regulations applicable to a CSA are in addition to the applicable rates and regulations specified in an ILEC's tariffs. CSAs are considered Presumptively Valid.

Within twenty (20) calendar days after the end of a quarter, an ILEC will file a summary report of all CSAs executed during the preceding quarter. The report will include the customer name, date signed, services provided, and contract prices. The summary report will be filed with the Commission's Telecommunications Division on a proprietary/confidential basis, with cost support information for a CSA available to the Telecommunications Division upon request.

[2] Resale pricing for rural carriers is subject to the procedures set out in Section 251(f) of the Act.

Prices, terms, and conditions offered pursuant to a CSA that are different from tariff prices, terms, and conditions for the same services are not considered discriminatory.

10. PROMOTIONS, CUSTOMER VALUE PROGRAMS, MARKETING/TECHNICAL TRIALS, & BUNDLED SERVICES

An ILEC may offer special Promotions and special Customer Value Programs, may conduct Marketing/Technical Trials, and may offer Bundled Services.

A. Promotions

Subject to the availability of products, services, and facilities, Promotions will be available to all subscribers meeting the eligibility criteria as set forth in the Promotion.

A Promotion shall not require a tariff filing. A transmittal letter shall be provided to the Commission for informational purposes only no later than one (1) calendar day prior to the commencement of the Promotion.

The following supporting documentation must be included with the transmittal letter for all Promotions:

i) A description of the Promotion (including terms and conditions);

ii) A description of the geographic area in which the Promotion will be offered;

iii) The eligibility criteria for the Promotion;

iv) The marketing period (beginning and ending dates);

v) The services included in the Promotion; and,

vi) Availability for resale.

Cost supporting documentation will be available to the Commission Staff upon request.

B. Customer Value Programs

Customer Value Programs will be available on a non-discriminatory basis to all subscribers meeting the eligibility criteria for each Program.

A Customer Value Program shall not require a tariff filing. A transmittal letter shall be provided to the Commission for informational purposes only no later than one (1) calendar day prior to the commencement of the Customer Value Program.

The following supporting documentation must be included with the transmittal letter for all Customer Value Programs:

i) A description of the Customer Value Program (including terms and conditions);

ii) A description of the geographic area in which the Customer Value Program will be offered;

iii) The eligibility criteria for the Customer Value Program;

iv) The marketing period (beginning and ending dates); and,

v) Availability for resale.

Cost supporting documentation will be available to the Commission Staff upon request.

C. Marketing/Technical Trials

A Marketing/Technical Trial shall not require a tariff filing. A transmittal letter shall be provided to the Commission no later than one (1) calendar day prior to the commencement of the Marketing/Technical Trial.

The following supporting documentation must be included with the transmittal letter for all Marketing/Technical Trials:

i) A description of the parameters of the Trial (including terms and conditions);

ii) A description of the geographic area in which the Trial will be offered; and,

iii) The rates and charges for the Trial, including any applicable range of rates within which the rates may be increased or decreased.

Marketing/Technical Trials may be offered for not less than one (1) month or more than twelve (12) months.

D. Bundled Services

Bundled Services may be offered to eligible customers in an ILEC's service areas. An ILEC shall specify the components of the Bundled Service offering.

Subject to the availability of products, services, and facilities, Bundled Services will be available to all subscribers meeting the eligibility criteria for such Bundled Services.

A Bundled Service shall not require a tariff filing. A transmittal letter shall be provided to the Commission no later than one (1) calendar day prior to the offering of the Bundled Service.

The following supporting documentation must be included with the transmittal letter for all Bundled Services:

i) A description of the Bundled Service (including terms and conditions);

ii) A description of the geographic area in which the Bundled Service will be offered;

iii) The eligibility criteria for the Bundled Service; and,

iv) The marketing period (beginning and ending dates).

While the regulated, standalone retail components of a Bundled Service are available for resale at the tariffed price and corresponding wholesale discount, the Bundled Service offered at one price shall not be available for resale.

Cost supporting documentation will be available to the Commission Staff upon request.

11. SERVICE QUALITY

An ILEC will conform to the service standards outlined in Section T-21 of the Commission's Telephone Rules. The Commission may require submission of reports and data as it deems necessary to monitor service performance.

12. EFFECTS OF EXTRAORDINARY GOVERNMENTAL ACTIONS

The financial impact of governmental mandates, both state and federal, that apply specifically and/or disproportionately to and have a major negative impact on telecommunications companies, may be recovered through an adjustment to the prices for Retail Telecommunications Services and Interconnection Services. In such an event, an ILEC shall notify the Commission of its intent to adjust prices. Such notice shall provide schedules and appropriate tariffs for the adjusted prices and their effective dates.

A "major" impact is an amount (intrastate only) exceeding two percent (2%) of an ILEC's total intrastate regulated revenues booked in the preceding fiscal year. In order for pricing adjustments to occur under this provision, an ILEC must demonstrate to the Commission the effect of the major impact. Price increases implemented under this provision shall not impact any price increases permitted by Section 8 of this Plan.

Upon adoption of this Plan, the Commission will open a rulemaking proceeding to consider revisions to T-21 to reflect the current technical and operational telecommunications environment.

13. CUSTOMER NOTIFICATION

An ILEC will provide customer notification of any price increases to all affected customers either by bill message, bill insert, or direct mail at the option of the Company at least seven (7) calendar days before any regulated prices are increased. Notice of a price increase shall include at a minimum the effective date of the price change(s), the existing price(s), and the new price(s).

14. REPORTING REQUIREMENTS

An ILEC shall file an annual Alabama combined income statement, its Form 10-K, and its Annual Report to Stockholders with the Commission by the first day of the fourth month after the end of the preceding fiscal year.

15. CUSTOMER COMPLAINT RESOLUTION

The Commission's existing customer complaint procedures remain in effect. The Commission will schedule workshops to determine whether changes to such complaint procedures are warranted.